

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

JUNCTION BUICK PONTIAC GMC-TRUCK

Employer

and

Case No. 8-RC-16059

**DISTRICT LODGE 54, LOCAL 1363, A/W
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding¹, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain

employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All service and lube technicians employed by the Employer, excluding all other service department employees, office clerical employees and professional employees, guards and supervisors as defined by the Act.

There are approximately 4 employees in the unit found to be appropriate.

The sole issue presented at the hearing was the composition of the bargaining unit. Petitioner requests that the unit consist of all service technicians employed by the Employer, while the Employer seeks to include, as part of the unit, all service department employees. The Petitioner's proposed unit consists of approximately 3 employees; while the Employer's proposed unit consists of approximately 7 employees. However, the Petitioner has indicated its willingness to proceed to an election in an alternate unit that I find to be appropriate.

At the hearing, one witness, Donald Debonis, the manager of the service department, testified at the request of the Employer. One witness, David Sestak, a service technician employed by the Employer, testified at the request of the Petitioner.

FACTS

The Employer, Junction Buick Pontiac-GMC, Inc., is an Ohio corporation engaged in the retail sale and servicing of new and used automobiles. The Employer's business is divided into four departments: a new car department, a used car department, a parts department, and a service department.

The service department is separated from the other departments by a wall. It is open from 7:30A.M. to 6:00P.M., Monday through Saturday. The service department consists of nine

¹ Both parties have filed briefs which have been carefully considered.

individuals: the service manager, the service writer/dispatcher, the three service technicians, the lube technician, the porter, the utility employee, and the detailer.² The service manager supervises the service department employees, and he reports directly to the owner.³

The service writer/dispatcher's (hereinafter referred to as the "service writer") work hours are 7:30A.M. to 5:00P.M or 5:30P.M. This position is salaried. The service writer gathers information from the customer related to the automobile's service needs, and then types the information on a repair order form using a computer.

After completing the repair order form, the service writer distributes it to the service technicians in rotation. After a service technician returns the repair order form to the service writer, the repair order form will at that point contain the probable nature of the automobile's mechanical problem, plus the parts and labor costs required to repair the automobile. If the service writer disagrees with the labor costs noted by the service technician, he will then contact the service technician to resolve the discrepancy. If the service writer and service technician are unable to agree on the labor costs, the service writer will contact the service manager who then makes a final determination on the labor costs. Once the parts and labor costs are finalized, the service writer will contact the customer and advise the customer of the nature of the mechanical problem, and the estimated cost of repairing the automobile.

The three service technicians perform diagnostics and repairs on all areas of an automobile's mechanical systems. One service technician's hours are 7:00A.M. to 3:00P.M. The other two service technicians' hours are 8:00A.M. to 5:00P.M. The service technicians are

² With respect to the detailer, who utilizes the service bays to clean and buff cars for resale, the parties stipulated that he not be included in the bargaining unit. Since there is no record evidence to the contrary, I shall accept the parties' stipulation, and shall exclude the detailer from the unit.

paid on a flat rate basis. The service technicians perform their work in the service bay area, which is an area that is physically separated from the rest of the service department by a glass garage door. There are twelve service bays in the service bay area.

After receiving a repair order form, the service technician diagnoses the mechanical problems listed on the form. After diagnosing the problems, the service technician then determines both the mechanical parts and the amount of time he will require in order to repair the automobile. The service technician writes all of this information on the back of the repair order form and returns the form to the service writer. When the service technician receives the repair order form back from the service writer, he then proceeds to repair the automobile using both his own tools and the service department's tools and equipment.

The lube technician's work hours are 8:00A.M. to 5:00P.M., and the position is paid an hourly wage. The lube technician works in the service bay area and uses the service bays to perform his work. The lube technician changes an automobile's oil and oil filter, lubricates the automobile's parts, checks fluid levels, and rotates and balances tires.

The porter's work hours are 8:00A.M. to 3:00P.M., three days a week, and 8:00A.M. to 1:00P.M., one day during the week. This position is paid an hourly wage. The porter moves automobiles from the parking lot to the service bay area, transports customers to and from the dealership, scrubs floors, cleans equipment, maintains repair manuals, and retrieves mechanical parts that the service technicians need to repair an automobile. The service manager supervises the porter in the morning, and the general sales manager supervises him in the afternoon.

The utility employee's hours are 8:30A.M to 5:00P.M., and the position is paid an hourly wage. The utility employee's duties consist of transporting customers, obtaining automobile

³ Inasmuch as the record establishes that the service manager has authority, in the interest of the Employer, to hire and reward, I find that the service manager is a supervisor within the meaning of

parts, obtaining dealer trades, and re-inspection of dealer trades. Dealer trades refers to the practice of obtaining an automobile from another automobile dealership when the Employer does not have a particular automobile that a customer wishes to purchase.

A collective bargaining agreement between the Petitioner and 33 Cleveland-area automobile dealerships was introduced into evidence at the hearing as a Joint Exhibit. The agreement covers a multi-facility bargaining unit comprised of service technicians, body technicians, and garagemen. The Employer is not a party to this agreement.

ANALYSIS

It is well established that the Act requires only that a petitioner seek an appropriate unit, and not the most comprehensive or most appropriate unit. **Overnite Transportation Company**, 322 NLRB 723 (1996); **Capital Bakers**, 168 NLRB 904 (1967); and **Morand Brothers Beverage Co.**, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1950). In deciding this issue, the Board first considers the petition and determines whether the unit sought is appropriate since a petitioner's desire concerning the composition of the unit which it seeks to represent constitutes a relevant consideration. **Marks Oxygen Company of Alabama**, 147 NLRB 228 (1964).

In determining the appropriate bargaining unit, the Board's focus is on whether the employees in question share a "community of interest". **Overnite Transportation Company**, supra at 724 (quoting **NLRB v Action Automotive**, 469 U.S. 490 (1985)). The Board has held that in arriving at an appropriate unit determination it weighs various community of interest factors including:

"[A] differences in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact, with other

Section 2(11) of the Act, and is, therefore, excluded from the unit determined herein to be appropriate.

employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.” **Kalamazoo Paper Box Corp.**, 136 NLRB 134, 137 (1962).

In cases in which the issue has involved the composition of appropriate bargaining units in an automobile service department, the Board has found that the determination of an appropriate unit depends upon the specific facts of each case. **Fletcher Jones Chevrolet**, 300 NLRB 875 (1990); **Dodge City of Wauwatosa**, 282 NLRB 459 (1986).⁴

In **Dodge City**, the Board, in concluding that the automobile mechanics constituted an appropriate bargaining unit, stated that, “mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive or motor service department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees”. **Dodge City**, at footnote 6.

In both **Fletcher Jones** and **Dodge City**, the petitioning union sought a unit consisting of service technicians, but excluding all other service department employees. While the employer, in both cases, argued for a unit consisting of the service technicians and all other service department employees. The Board, in both cases, concluded that a unit consisting of the service technicians and lube technician(s), but excluding all other service department employees, was an appropriate unit for collective bargaining.

In reaching its decisions in **Fletcher Jones** and **Dodge City**, the Board found that the service technicians were a distinct and homogenous group of craft employees with a community

⁴ In support of its position, the Employer contends that there has been a history of collective bargaining between the Petitioner and 33 Cleveland-area automobile dealerships on a broader basis than the Petitioner’s proposed unit at issue here. While this may be a factor in unit determination, the Board has consistently held that the bargaining pattern in a particular industry will not be considered controlling in determining the appropriateness of a petitioned-for bargaining unit at a particular facility. **Big Y Foods** 238 NLRB 855 (1978); **Spartan Department Stores** 140 NLRB 608 (1963); **Miller & Miller Motor Freight Lines**, 101 NLRB 581 (1953). I do not find that the pattern of bargaining in the area supercedes the factors supporting my conclusion as to the appropriate unit in the instant matter.

of interest. Specifically, the Board noted that the service technicians performed duties which were different from the other service department employees; possessed skills that were different from or not used by the other employees; provided their own tools; and were compensated at a different rate from the other employees. The Board also noted that the majority of the service technicians were certified to perform their job functions, and that the employer required, provided, and paid for training for the service technicians. Further, the Board included the lube technicians because they were the equivalent of helpers or trainees to the service technicians.⁵

Based on the foregoing principles, I conclude that a unit consisting of service technicians and lube technicians, but excluding all other service department employees, is an appropriate unit for collective bargaining.

The Employer relies on a number of prior Board decisions in support of its argument that that only appropriate unit in an automobile service department consists of all service department employees.⁶ I note that in **Dodge City**, the Board clearly rejected such an argument when it stated that, “contrary to the [Employer’s argument], the Board has *not* determined per se that the only appropriate unit in this industry must include all of the employees of an employer’s service department” (emphasis added) **Dodge City** at 460.⁷

⁵ The Board, in concluding that the lube technicians shared a community of interest with the service technicians, cited American Potash & Chemical Corp. 107 NLRB 1418, 1423 (1954) wherein the Board held that a craft unit, “consists of a distinct and homogenous group of skilled journeymen craftsmen, working as such, together with their apprentices or helpers”.

⁶ The Employer cites R.H. Peters Chevrolet, Inc., 303 NLRB 791 (1991); Gregory Chevrolet, Inc., 258 NLRB 233 (1981); Graneto Dotsun, 203 NLRB 550 (1973); and Austin Ford, Inc., 136 NLRB 1398 (1962) in support of its argument.

⁷ Since Dodge City was decided after Gregory Chevrolet, Graneto Dotsun, and Austin Ford, its holding clearly reflects the Board’s position that the appropriateness of a unit in an automobile service department will depend on the facts of each case. Further, R.H. Peters Chevrolet, which was decided after Dodge City, is factually distinguishable because it involved a unit that the parties stipulated to and the Board was determining the inclusion of certain employees, and not the appropriateness of the unit. Finally, it is worth noting that R.H. Peters Chevrolet, Gregory Chevrolet, and Graneto Dotsun are all factually

The Employer's service technicians and lube technician perform significantly different duties than the other service department employees. The service technicians' duties consist primarily of performing mechanical repair work on an automobile. The mechanical work consists of repairing all of an automobile's mechanical systems, and performing routine maintenance on an automobile's mechanical systems including oil and filter changes, lubrication, and tire rotations and balancing.

The lube technician also performs mechanical work. The lube technician's mechanical work consists of oil and filter changes, lubrication, and tire rotations and balancing. The mechanical work that the lube technician performs is also mechanical work performed by the service technicians. Further, the lube technician performs his work in the service bay area alongside the service technicians.

With respect to the other service department employees, the record reveals that neither the porter nor utility employee perform any mechanical work. The Employer's service manager, Donald Debonis, testified that in the past month the service writer has performed mechanical repair work once or twice for a few minutes due to General Motors' requirements. The service technician, David Sestak, testified that he was not aware of the service writer ever performing any mechanical work. The record does not indicate the exact nature of any mechanical work performed by the service writer, and I find that the amount of time that the service writer may have performed mechanical work is insignificant.

Therefore, since only the service technicians and the lube technician perform mechanical work, I find that the service technicians and lube technician perform duties which are significantly different from those of the other employees. My finding with respect to the lube

distinguishable from Dodge City and the instant case because in those cases the petitioned for unit consisted of a larger unit than just the service technicians.

technician is consistent with the Board's finding in **Fletcher Jones** and **Dodge City** where the Board, on similar facts, found that the lube technicians performed mechanical work.

The service technicians have skills, which either are not possessed by, or not used by the other service department employees, except for the lube technician. The record indicates that the service technicians have the mechanical skills necessary to perform mechanical repair work on Buick, Pontiac, and GMC automobiles.

While the lube technician is not as skilled as the service technicians, the record indicates that he uses mechanical skills in performing his job responsibilities. As noted above, the lube technician performs oil and filter changes, lubrication, and tire rotations and balancing. This is mechanical work which is also performed by the service technicians. Since both the service technicians and the lube technician perform this type of mechanical work, arguably they both have the requisite mechanical skills. Further, the service manager testified that the lube technician needed basic mechanical skills in order to perform his job.

The Employer contends that the service writer both possesses and uses mechanical skills. There is evidence in the record indicating that the service writer does possess mechanical skills. For instance, in order for the service writer to communicate between the service technicians and the customer, he must have a basic understanding of an automobile's mechanical systems. Further, the record indicates that the Employer's current service writer, previously owned and operated an automobile repair and service business.

While the service writer arguably possesses mechanical skills, the record does not indicate that he uses these skills to perform mechanical repair work like the service and lube technicians. As noted above, the service writer performs a minimal amount of mechanical repair work. Therefore, I find that the service writer does not use his mechanical skills to perform

mechanical work, which makes the service writer's mechanical skills substantially different from those of the service and lube technicians⁸.

With respect to the skills of the porter and utility employee, nothing in the record indicates that they possess or use mechanical skills related to the mechanical repair of automobiles. Thus, I find that the porter and utility employee do not possess the skills of the service and lube technicians. They also perform duties that are distinct from those of the service and lube technicians.

The service technicians have certifications that are not possessed by other employees. The record indicates that all three of the Employer's service technicians are certified with respect to working on Buicks, Pontiacs, and GMC trucks. One service technician is manufacturer certified in all areas, while the other two service technicians are manufacturer certified in some areas. Further, two of the service technicians hold Automobile Service Excellence (ASE) certifications.

The parties dispute whether or not the Employer requires that the service technicians be certified when hired. The Employer contends that it does not require that the service technicians be certified, while the Petitioner contends that the Employer does require pre-employment certification.

In support of its argument, the Employer offered evidence that it recently interviewed a service technician candidate who was not certified, and that not all of the service technicians are certified to the same degree. Conversely, the Petitioner offered into evidence an Employer advertisement which stated that repairs at the Employer's business were done by ASE certified

⁸ In its post-hearing brief, the Petitioner contends for the first time that the service writer should also be excluded from the unit as a supervisor. The Petitioner asserts that the service writer's role in the assignment of work and determination of pay vests him with supervisory authority within the meaning of

technicians. Further, the Petitioner noted that all three technicians are either manufacturer or ASE certified.

However, whether or not the Employer requires certification is not dispositive. In both **Fletcher Jones** and **Dodge City**, the Board focused not on whether the employer required certification, but on the fact that the majority of the service technicians were certified. The fact that the majority of the service technicians were certified in these cases supported the service technicians' craft identity.

The Employer's service technicians have either manufacturer or ASE certifications. Therefore, I find the fact that they are certified is substantial evidence of their craft identity. This is especially important because the record does not indicate that any of the Employer's other service department employees are certified in mechanical repair work.

The Employer requires, provides, and pays for the training for the service technicians. The Employer's service manager testified that the service technicians receive manufacturer provided training in the area of automotive mechanical repairs. The service manager also testified that the Employer and manufacturer require and provide this training. Further, he testified that all of the current service technicians received this training, and that the Employer paid for the training. The service manager testified that the service writer receives training only with respect to technical service bulletins/recalls. Since the record indicates that no other service department employees receive training in the area of automotive mechanical repairs, I find that the service technicians receive training that is different from the other service department employees. I also find that the Employer requires, provides, and pays for this training.

Section 2(11) of the Act. I find that this argument lacks merit because the service writer's role with respect to these duties is routine and does not include the exercise of independent judgment.

The service technicians differ from the other employees with respect to tools because they provide their own tools. The other service department employees do not use these tools. Both the service manager and service technician testified that the service technicians are required to provide their own tools. Further, both witnesses testified that none of the other service department employees are required to provide their own tools. Therefore, I find that the service technicians are different from the other employees with respect to providing their own tools, and utilizing tools that are not used by the other service department employees. I also find that the lube technician has some similarity with the service technicians because he uses the same Employer provided tools that the service technicians use when he performs his mechanical duties.

With respect to wages, the service technicians receive different wages than the other service department employees. The record indicates that the Employer compensates the service technicians on a flat rate basis. In contrast, the service writer receives a salary, and the lube technician, porter, and utility employee receive an hourly wage. Based on these facts, I find that the service technicians receive a different wage than the other service department employees.

In summary, I find that the service technicians have their own community of interest as a group of craft employees. The service technicians perform automotive mechanical duties, and possess and use mechanical skills, which differentiates them from the other service department employees. The service technicians are also certified in mechanical repairs while the other service department employees are not. Further, the service technicians receive different training, use different tools, and receive a different wage than the other service department employees.

I also find that the lube technician has a community of interest with the service technicians and I shall include them in the unit. The lube technician, like the service technicians,

performs mechanical work, and uses and possesses mechanical skills. He also uses some of the same tools as the service technicians. Further, the lube technician performs his work at a service bay alongside the service technicians in the service bay area. My finding that the lube technician shares a community of interest with the service technicians is consistent with the Board's conclusion in **Fletcher Jones** and **Dodge City**.

Based on the foregoing and the record as a whole, I find that a unit consisting of service and lube technicians, and excluding all other service department employees is an appropriate unit for collective bargaining, and I shall direct an election in that unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be

represented for collective bargaining purposes by **DISTRICT LODGE 54, LOCAL 1363 A/W INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by July 14, 2000.

Dated at Cleveland, Ohio this 30th day of June 2000.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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